IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No.482/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : November 14, 2006

By this appeal, the appellant takes exception to the judgment and decree dated 1/3/2006 passed by II Adhoc Additional District Judge, Achalpur in Regular Civil Appeal No.50/2002 dismissing the appeal filed by the appellant-plaintiff against judgment and decree dated 16.8.2002 passed by Joint Civil Judge, Jr. Dn. Daryapur in Regular Civil Suit No.108/1996 dismissing the suit filed by the plaintiff.

The plaintiff filed the above suit for possession, permanent injunction and mandatory injunction against defendant alleging that he purchased the suit property by unregistered sale deed dated 28.9.1964

for consideration of Rs. 100/- from one Zingurao Charpe. The suit was filed seeking relief of possession and injunction against defendant on the ground that the defendant had encroached upon the suit property and started construction. The suit was contested by the defendant. The plaintiff examined four witnesses whereas the defendant examined two witnesses. The trial Court, upon appreciation of the evidence led by the parties, held that since the sale deed was not registered the plaintiff had not proved his title by virtue of the said sale deed, however, the plaintiff had proved his possessory title. The trial Court refused to grant a decree on the ground that there was variance in the evidence of the plaintiff and the witnesses examined by the plaintiff and, therefore, the trial Court held that the plaintiff has not proved his case and consequently dismissed the suit. The trial Court also relied upon certain admissions made in notice dated 3.6.1996 addressed by the

plaintiff to the defendant. In appeal, preferred by the plaintiff, the lower appellate Court held that the plaintiff has neither proved his title to the suit property nor possession thereof. The lower appellate Court also held that the map which was prepared by one of the witnesses who was examined by the plaintiff was prepared upon instructions of the plaintiff only and, therefore, the plaintiff had not proved encroachment made by the defendant. The lower appellate Court dismissed the appeal filed by the plaintiff. Hence, the present second appeal.

Mr. Bhamburkar, Advocate appearing on behalf of the appellant submitted that the plaintiff has proved his title to the suit property although the sale deed was not registered. He also submitted that there was no necessity that the sale deed had to be registered to prove the title of the plaintiff in respect of the suit property. He further submitted that the findings recorded by both the Courts below

while holding that the plaintiff had not proved encroachment by the defendant are contrary to the evidence on record and as such perverse. He further submitted that both the Courts below erred in holding that the plaintiff had made certain admission in his notice dated 3.6.1996 without considering that in the subsequent notice the plaintiff had withdrawn the admission. Lastly, he submitted that the impugned judgments and decrees are liable to be set aside.

I have considered the submissions made by learned counsel and perused the records. I am unable to accept the submission of Mr. Bhamburkar that the plaintiff has proved his possessory title to the suit property since the sale deed was required to be compulsorily registered and in the absence of registration, the same did not confer title on the plaintiff in respect of the suit property. Moreover, the finding recorded by the trial Court, which has been confirmed by the lower appellate Court that

the plaintiff had not proved encroachment by the defendant cannot be said to be perverse inasmuch as the same is based upon proper appreciation of the evidence. The trial Court was justified in holding that there was variance between evidence of the plaintiff and his witnesses insofar as the encroachment by the defendant is concerned and, therefore, the trial Court as well as lower appellate Court cannot be faulted for arriving at the finding that the plaintiff had not proved encroachment by the defendant. In my opinion, the trial Court was justified in relying upon notice dated 3.6.1996 issued by the plaintiff which clearly belied the case set up by the plaintiff. The attempt made by the plaintiff to withdraw the admission was nothing but an afterthought and as such cannot come to the rescue of the plaintiff. In my opinion, the findings recorded by both the Courts are based upon proper appreciation of the evidence and since there are concurrent findings of fact, I do not find any ground to

interfere with the impugned judgments and decrees in exercise of jurisdiction under section 100 of the Code of Civil Procedure. No substantial question of law is involved in the appeal. Hence, the appeal is summarily rejected.

JUDGE

A.